

LAVERN BERRYHILL,

Plaintiff,

v.

JUDGE JAMES H. PAYNE, et al.,

Defendants,

No. CIV 10-247-JHP-SPS

In *Berryhill v. Poppell*, No. CIV-99-407-D (W.D. Okla. May 25, 1999), the United States District Court for the Western District of Oklahoma found that plaintiff had filed 11

previous lawsuits pursuant to 42 U.S.C. § 1983. *Id.*, slip op. at 1. Three of the 11 cases were dismissed for failure to state a claim or as frivolous, and one of the dismissals was affirmed on appeal:

Berryhill v. Beckman, No. CIV-85-1364-E, *aff'd*, No. 86-1533 (10th Cir. Oct. 22, 1986) (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); *Berryhill v. Maynard*, No. CIV 88-1034-T (motion to dismiss under Rule 12(b)(6) and 28 U.S.C. § 1915(d) granted); and *Berryhill v. Faulk*, No. CIV-92-1705-T (dismissed upon filing for failure to state a claim).


Berryhill v. Poppell, No. CIV-99-407-D, slip op. at 2 n.1.

Plaintiff alleges the defendants, who are District Court Judges in this court, a Magistrate Judge in this court, and various OSP and DOC officials, have joined a RICO enterprise to obstruct justice and conspire to murder him. These alleged actions by the defendants are in retaliation for plaintiff's previous litigation concerning a Thirteenth Amendment claim and his involuntary servitude. He also contends the defendants are stealing his mail, fabricating misconduct reports, committing fraud and perjury in the federal courts, and serving him contaminated food and water. These claims are similar to those presented by plaintiff in previous cases. *See Berryhill v. White*, No. CIV 10-176-JHP (E.D. Okla. June 7, 2010); *Berryhill v. Henry*, No. CIV 10-091-FHS-SPS (E.D. Okla. May 5, 2010). While plaintiff claims the defendants' activities have caused him severe mental anguish, pain, and suffering, the court finds his conclusory allegations fail to set forth a credible claim that he is in imminent danger of serious physical harm and that he qualifies for the exception in 28 U.S.C. § 1915(g).

ACCORDINGLY, plaintiff's motion for leave to proceed *in forma pauperis* [Docket #2] is DENIED. Plaintiff is directed to forward the **\$350.00** filing fee to the Court Clerk within twenty (20) days. The agency having custody of plaintiff is ordered to release funds

from plaintiff's accounts, including plaintiff's trust account, for payment of the filing fee.
Failure to comply with this order will result in dismissal of this action.

IT IS SO ORDERED this 16th day of July 2010.



James H. Payne
United States District Judge
Eastern District of Oklahoma